

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

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CARMEN GUSTIN,

Plaintiff,

vs.

DOSKOCIL MANUFACTURING CO.,

Defendant.

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2:14-cv-00700-RCJ-CWH

**ORDER**

These consolidated cases arise out of a shooting resulting from an allegedly defective gun case. Pending before the Court are a Motion to Reconsider (ECF No. 157) and an Amended Motion for Court Approval of Settlement and Minor's Compromise (ECF No. 165). The Court denies the motion to reconsider and grants the motion to approve minor's compromise.

**I. FACTS AND PROCEDURAL HISTORY**

On August 9, 2012, Plaintiff Carmen Gustin's ten-year-old son Cole was playing in his home when he found a Daskocil gun case secured with two padlocks. (Second Am. Compl. ¶¶ 9–10, ECF No. 135). Without unlocking or removing either lock, Cole pulled a pistol out of the case and shot himself in the head, causing serious injury. (*Id.* ¶ 12).

On March 20, 2014, Cole sued Defendants Plano Molding Co. ("Plano") and Daskocil Manufacturing Co. ("Daskocil") in state court through his guardian ad litem for strict liability

1 and negligence. Plano removed, and the case was assigned to this Court as case number 2:14-cv-  
2 700. Plano moved for summary judgment based on evidence that it had not obtained the molds  
3 to make cases like the one at issue here until after the case was sold. The Court granted the  
4 motion, leaving Daskocil as the sole remaining Defendant in the '700 Case. Those claims  
5 remain for trial.

6 On November 17, 2014, Carmen sued Plano and Daskocil in state court on her own  
7 behalf for strict liability, negligence, and negligent infliction of emotional distress ("NIED").  
8 Defendants removed the First Amended Complaint ("FAC"), and the case was assigned to Judge  
9 Mahan as case number 2:15-cv-589. The parties stipulated to consolidate the '589 Case into the  
10 '700 Case, with the latter case as the lead case. Daskocil moved to dismiss the FAC based on  
11 the statute of limitations, and the Court granted the motion, with leave to amend to allege facts  
12 concerning the discovery rule. Carmen filed the Second Amended Complaint ("SAC"),<sup>1</sup> and  
13 Daskocil moved to dismiss it under the statute of limitations, arguing that the discovery rule does  
14 not apply to the claims in this case. The Court granted the motion.

15 Carmen has asked the Court to reconsider dismissal of the '589 Case under the statute of  
16 limitations. The Court declines to reconsider. Furthermore, Cole has asked the Court to approve  
17 a settlement of his claims in the '700 Case, and no party has objected. As noted at the hearing,  
18 the Court grants that motion.

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19  
20 1 The caption of the SAC lists case number 2:14-cv-700. That appears to have been in error.  
21 Cole's claims are at issue in the '700 Case. In that case, Cole's claims for strict liability and  
22 negligence remain as against Daskocil. The SAC is an amendment of Carmen's claims in the  
23 '589 Case for NIED, negligence, and strict liability against Daskocil. It is not a consolidated  
24 pleading with the remaining claims in the '700 Case. In other words, there remain two separate  
(though consolidated) cases with their own operative complaints, and the SAC filed at Docket  
No. 135 should contain the case number 2:15-cv-589. Also, the caption of the SAC lists Plano as  
a Defendant, but Plano is not listed as a party in the body of the SAC, and the Court perceives  
this to also be an error in the caption of the SAC.

1 **II. DISCUSSION**

2 The Court previously ruled that the statutory text indicated that the discovery rule did not  
3 apply to claims governed by Nevada Revised Statutes section 11.190(4)(e), which includes  
4 personal injury claims like the present one. There was no controlling authority on the issue, but  
5 the Nevada Supreme Court had explicitly so ruled in an unpublished opinion, and the Court  
6 independently agreed with the analysis. Carmen has asked the Court to reconsider. The Court  
7 will not reconsider, because there was no clear error of law. *See School Dist. No. 1J v. ACandS,*  
8 *Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). As Defendant notes, Carmen cites only to federal  
9 district court opinions and another unpublished opinion of the Nevada Supreme Court. And in  
10 the latter case, the application of the discovery rule did not matter, because the Court found that  
11 the limitations period had run even assuming the discovery rule applied.

12 **CONCLUSION**

13 IT IS HEREBY ORDERED that the Motion to Reconsider (ECF No. 157) is DENIED.

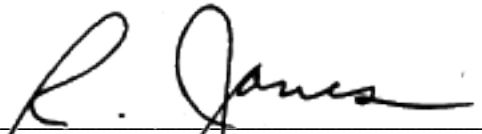
14 IT IS FURTHER ORDERED that the Amended Motion for Court Approval of Settlement  
15 and Minor's Compromise (ECF No. 165) is GRANTED.

16 IT IS FURTHER ORDERED that the Motion for Summary Judgment (ECF No. 161) and  
17 the Motion to Shorten Time (ECF No. 175) are DENIED as moot.

18 IT IS FURTHER ORDERED that the Clerk shall enter judgment in Case No. 2:14-cv-  
19 700 and close the case.

20 IT IS SO ORDERED.

21 Dated this 6th day of July, 2016.

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24 ROBERT C. JONES  
United States District Judge